

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS
No. 23-1567V

BRETT MERRILL,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: April 23, 2025

Leigh Finfer, Muller Brazil, LLP, Dresher, PA, for Petitioner.

Ryan Nelson, U.S. Department of Justice, Washington, DC, for Respondent.

DECISION ON ATTORNEY'S FEES AND COSTS¹

On September 12, 2023, Brett Merrill filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*² (the “Vaccine Act”). Petitioner alleged that he sustained a shoulder injury related to vaccine administration following an influenza vaccine he received on September 27, 2022. Petition, ECF No. 1. On December 18, 2024, I issued a decision awarding compensation to Petitioner based on the parties’ stipulation. ECF No. 22.

¹Because this Decision contains a reasoned explanation for the action taken in this case, it must be made publicly accessible and will be posted on the United States Court of Federal Claims’ website, and/or at <https://www.govinfo.gov/app/collection/uscourts/national/cofc>, in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2018) (Federal Management and Promotion of Electronic Government Services). **This means the Decision will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all section references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2018).

Petitioner has now filed a motion for attorney's fees and costs, requesting an award of \$8,566.04 (representing \$8,100.10 in fees plus \$465.94 in costs). Application for Attorneys' Fees and Costs ("Motion") filed January 23, 2025, ECF No. 26. Furthermore, counsel for Petitioner represents that Petitioner incurred no personal out-of-pocket expenses. ECF No. 26 at 2.

Respondent reacted to the motion on February 5, 2025, indicating that he is satisfied the statutory requirements for an award of attorneys' fees and costs are met in this case. ECF No. 27. Petitioner filed no reply thereafter.

I have reviewed the billing records submitted with Petitioner's request. The rates requested for work performed through the end of 2024 are reasonable and consistent with our prior determinations and will therefore be adopted.

Petitioner has also requested the hourly rate of \$350.00 for 2025 work performed by attorney Leigh Finfer, representing a rate increase of \$50.00 from the previous year. Although the proposed new rate falls within the experience range provided in OSM's recently updated Fee Schedules³ for similarly-situated attorneys, I find the specifically-requested increase to be excessive (solely because it exceeds in magnitude the rate increases awarded for this attorney in past years – not because of any concerns with the quality of her work, which remains high). Rather, based on my experience applying the factors relevant to determining proper hourly rates for Program attorneys,⁴ a rate of **\$330.00 per hour** is more appropriate for time billed by Ms. Finfer in 2025, given her relevant experience. **Application of the foregoing reduces the fees to be awarded by \$20.00.**⁵

Petitioner has provided supporting documentation for all claimed costs. ECF No. 26 at 13-16. Respondent offered no specific objection to the rates or amounts sought. I find the requested costs reasonable and hereby award them in full.

The Vaccine Act permits an award of reasonable attorney's fees and costs for successful claimants. Section 15(e). Accordingly, I hereby GRANT, in part, Petitioner's Motion for attorney's fees and costs. **Petitioner is awarded attorneys' fees and costs**

³ The OSM Attorneys' Fee Schedules are available on the U.S. Court of Federal Claims website at <https://www.uscfc.uscourts.gov/osm-attorneys-forum-hourly-rate-fee-schedules>

⁴ See *McCulloch v. Health and Human Services*, No. 09–293V, 2015 WL 5634323 at *17 (Fed. Cl. Spec. Mstr. Sept. 1, 2015).

⁵ This amount is calculated as: $(\$350 - \$330 = \$20 \times 1.00 \text{ hr.}) = \20.00 .

in the total amount of **\$8,546.04** (representing \$8,080.10 in fees plus \$465.94 in costs) to be paid through an ACH deposit to petitioner's counsel's IOLTA account for prompt disbursement. In the absence of a timely-filed motion for review (see Appendix B to the Rules of the Court), the Clerk of Court shall enter judgment in accordance with this decision.⁶

IT IS SO ORDERED.

s/Brian H. Corcoran

Brian H. Corcoran
Chief Special Master

⁶ Pursuant to Vaccine Rule 11(a), the parties may expedite entry of judgment by filing a joint notice renouncing their right to seek review.